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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 CHRISTOPHER B. WILLIAMS,

14 Defendant.
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Case No. 2:05-CR-00441-KJD-LRL

ORDER

16 Presently before the Court is the Report and Recommendation (#31) of the Honorable
17 Lawrence R. Leavitt recommending the denial of Defendant's Motion to Suppress (#21). The
18 Defendant filed Objections to Report and Recommendation (#33), to which the Government filed a
19 response (#35). After having reviewed the record in this case in accordance with 28 U.S.C.
20 § 636(b)(1)(C) and Local Rule LR IB 3-2, the Court will overrule Defendant's objections, adopt the
21 Report and Recommendation, and deny Defendant's motion.

22 **I. Seized Firearm & Ammunition.**

23 In the underlying motion, Defendant asked the Court to suppress the firearm and ammunition
24 seized from his person because the officers conducted the search without reasonable suspicion. After
25 conducting an evidentiary hearing, the magistrate judge found that under the totality of the
26 circumstances the police had a reasonable suspicion that Defendant was armed and dangerous and

1 posed an immediate threat to the safety of the officers and others. Additionally, the magistrate judge
2 found that the police had probable cause to arrest him. In making these findings, the magistrate
3 judge specifically outlined the circumstances surrounding Defendant's arrest and subsequent search.
4 In conclusion, the magistrate judge summarily stated that he based his findings on Defendant's
5 violation of traffic law, i.e. walking down the middle of the street, his aggressive behavior toward the
6 officers, and his failure to respond to their commands.

7 In his objections, Defendant argues that the magistrate judge erred in finding that probable
8 cause existed for his arrest because: (1) the Report and Recommendation makes no mention of what
9 traffic law he violated; and (2) it placed improper emphasis on the fact that Defendant refused to
10 respond to the officers' commands. Neither objection has merit. The Report and Recommendation's
11 failure to cite the applicable traffic code does not change the fact that the magistrate judge
12 specifically noted the officers initially found the Defendant in the middle of an intersection. The
13 officers were responding to calls reporting a man walking in the street shooting at cars. Moreover,
14 the magistrate judge noted that Defendant ignored the officers initial commands and left the scene by
15 walking down the middle of the street. These actions clearly constitute minor traffic violations. The
16 failure to cite specific code sections is immaterial.

17 Likewise, Defendant's argument that the magistrate judge placed too much emphasis on his
18 refusal to respond to the officer's commands lacks merit. Defendant attempts to challenge the three
19 summary reasons the magistrate judge gave in recommending the denial of this aspect of his motion.
20 A review of the whole report, however, indicates that the magistrate judge evaluated the totality of
21 the circumstances in reaching his recommendation. The fact that the magistrate judge summarily
22 listed three reasons does not negate the extensive analysis he provided earlier in the report. It is this
23 extensive and specific analysis that provides the support for the magistrate judge's recommendation.

24 **II. Voluntary Statements.**

25 In the underlying motion, Defendant also asked the Court to suppress all statements he made
26 following his seizure because he did not voluntarily waive his Miranda rights. Defendant alleged

1 that his inhalation of PCP as well as his injuries from the Taser gun rendered him unable to voluntary
2 waiver. The magistrate judge found that the evidence belied his allegations. Specifically, the
3 criminalist testified at the evidentiary hearing that he found only small amounts of a substance that
4 may have been PCP in Defendant's system, an amount so insufficient that criminalist routinely do
5 not perform further tests. Additionally, the magistrate judge found that Defendant's injuries from the
6 Taser gun were minor as he was promptly treated and released from UMC. Additionally, Officer
7 Crocker testified at the evidentiary hearing that Defendant was alert, well oriented and had no
8 difficulty understanding her questions.

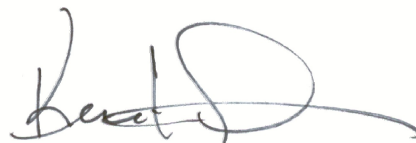
9 In his objections, Defendant argues that the magistrate judge improperly discredited the
10 evidence that established Defendant to be under the influence of PCP. The Court finds the objection
11 without merit. Even assuming that Defendant had ingested something intoxicating, the testimony
12 unequivocally established that he was cogent and perfectly capable of understanding his rights and
13 knowingly and voluntarily waiving them. The transcript of Defendant's voluntary statement supports
14 the finding that Defendant was cogent enough to voluntarily waive his Miranda rights.

15 Accordingly, IT IS HEREBY ORDERED that Defendant's Objections to Report and
16 Recommendation of U.S. Magistrate Judge (#33) are **OVERRULED**.

17 IT IS FURTHER ORDERED that the Report and Recommendation (#31) of Magistrate
18 Judge Lawrence R. Leavitt is **APPROVED** and **ADOPTED**.

19 IT IS FURTHER ORDERED that Defendant's Motion to Suppress (#21) is **DENIED**.

20 DATED this 3rd day of October 2006.

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24 Kent J. Dawson
25 United States District Judge
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